

Agency:	107 Health Care Authority
Decision Package Code/Title:	ML2-FC Moore, et al. v. HCA Litigation
Budget Period:	2015-17 Biennial Submittal
Budget Level:	ML2 – Maintenance Level 2

Recommendation Summary Text

The Health Care Authority (HCA) requests \$2,360,000 in the 2015-17 biennium to support legal services provided by the Office of the Attorney General (AGO) in response to two major class action lawsuits entitled *Moore, et al. v. HCA* and *Moore II v. HCA*.

Package Description

The HCA requests \$2,360,000 for continued legal services related to a major class action lawsuit against the HCA entitled *Moore, et al. v. HCA* and a second major class action lawsuit against the HCA entitled *Moore II v. HCA*. Moore II presents similar theories to the Moore I litigation. This request will fund the AGO staff and direct costs in their work to protect the HCA and the taxpaying citizens of the state from exposure to liability that may exceed \$150M.

The first case was filed in 2006. Plaintiffs claim the State failed to provide statutorily mandated health benefits to non-full-time state employees who worked at least half-time over certain periods of time (e.g., over nine months for “career-seasonal” employees). The plaintiffs’ case asserts two legal claims: 1) that the State breached its statutory duty to provide these benefits; and 2) that the class members are third party beneficiaries of the written contracts that the HCA signs each year with health care providers to supply benefits to eligible workers and the alleged breach is the failure to provide the benefits.

In June 2007, the court certified the breach of statute claim for liability purposes only. Over the course of the next two and one-half years in a series of summary judgment motions, the court found that the State should have averaged hours, did not and, as a result, failed to provide health benefits to a large group of part-time employees. In December 2011, the court certified a damages class on the breach of statute claim. The measure of damages remains in dispute. The plaintiffs are seeking a measure based on the value of premiums and the State seeks a measure based substantially on whether any uninsured expenses were actually incurred. In March 2013, the Court of Appeals (Division One) accepted discretionary review at the State’s request of the trial court’s decision on the issue of the measure of damages for failure to provide health benefits and on plaintiffs’ motion for transfer, the Supreme Court accepted direct review in February 2014. Oral argument before the Supreme Court was heard on May 15, 2014.

A second action (Moore II) was filed in June 2013 which is a continuation of Moore's 2006 class action lawsuit alleging that the State breached its statutory and contractual duties and misclassified employees to deny health benefits to certain part-time workers, thereby engaging in unfair practices under RCW 49.44.160 and .170. Plaintiffs seek unspecified compensatory damages, declaratory relief, injunctive relief, and attorneys’ fees and costs. Trial in Moore II is scheduled for September 28, 2015.

The AGO anticipates the detailed auditing of employee hours across numerous State agencies will continue and will actually increase, since the filing of Moore II will require similar auditing for additional classes of employees. This is an extremely labor intensive process, but cannot be avoided

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due to the requirement to generate accurate lists of employees who may be properly considered to be class members. The amounts of data are so massive and nuanced that outside data management expertise is necessary and will continue to be critical over the next biennium.

The first few years of the case were spent responding to the plaintiffs' massive discovery requests and litigating the issue of class certification of the breach of statute claim, as well as the State's liability on that claim. Recent years have focused on various legal issues including certification of the breach of contract claim (granted in 2011). In addition, the State has needed the assistance of outside experts to produce discovery, devise methods of using the electronic data to identify potential class members, provide written notices to those class members, provide expert advice on the unique legal issues associated with class actions and provide expert opinions on other issues such as the measure of damage. Through the close of fiscal year 2014, all costs incurred by the AGO (both direct and indirect) during the litigation of this matter total over \$7,156,000. Those amounts will increase substantially due to the filing of Moore II.

Although the HCA is the primary named defendant because of its role as the administrator of benefits for state employees, plaintiffs' claims focus on the practice of over 62 state agencies and all seven higher education agencies. Plaintiffs seek unspecified compensatory damages, declaratory relief, injunctive relief, and attorneys' fees and costs. The HCA's budget for all legal services is inadequate to support the costs of this lawsuit.

The desired result of this request is to allow the State to continue to defend itself and prepare for trial of the disputed issues. Simultaneously, diligently preparing defences' will also allow the State to be in a position to participate in settlement negotiations from an informed position. With possible repercussions totalling approximately \$150 million, the continued funding of an effective litigation team in the 2015-2017 biennium is imperative to put the State in the best position possible to defend the merits of the case and/or negotiate a reasonable settlement.

Pursuant to RCWs 43.10.030 and 43.10.040, the HCA is required to employ the AGO's legal services when party to litigation, thereby, reducing the risk of costly settlements. The desired result of this request is to reach a cost-effective resolution to this case and to avoid further litigation. With possible repercussions totaling in multi-million dollar amounts, the funding of an effective litigation team is imperative to reduce expenses in the future.

Questions related to this request should be directed to Cari Tikka at (360) 725-1181 or at Cari.Tikka@hca.wa.gov.

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Fiscal Detail/Objects of Expenditure

	FY 2016	FY 2017	Total
1. Operating Expenditures:			
Fund 418-1 HCA Admin Account	\$ 1,180,000	\$ 1,180,000	\$ 2,360,000
Total	\$ 1,180,000	\$ 1,180,000	\$ 2,360,000
	FY 2016	FY 2017	Total
2. Staffing:			
Total FTEs	-	-	-
	FY 2016	FY 2017	Total
3. Objects of Expenditure:			
A - Salaries And Wages	\$ -	\$ -	\$ -
B - Employee Benefits	\$ -	\$ -	\$ -
C - Personal Service Contracts	\$ -	\$ -	\$ -
E - Goods And Services	\$ 1,180,000	\$ 1,180,000	\$ 2,360,000
G - Travel	\$ -	\$ -	\$ -
J - Capital Outlays	\$ -	\$ -	\$ -
N - Grants, Benefits & Client Services	\$ -	\$ -	\$ -
Other (specify) -	\$ -	\$ -	\$ -
Total	\$ 1,180,000	\$ 1,180,000	\$ 2,360,000
	FY 2016	FY 2017	Total
4. Revenue:			
Fund 418-1 HCA Admin Account	\$ 1,180,000	\$ 1,180,000	\$ 2,360,000
Total	\$ 1,180,000	\$ 1,180,000	\$ 2,360,000

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

This request is critical to the continued defense of this major litigation dispute. The outcome of this case will have major fiscal implications for the state and could create a long-lasting precedent.

The AGO will perform essential legal services with the goal of prevailing in the trial courts and the courts of appeal. The AGO is working to protect the HCA and the taxpaying citizens of the state from exposure to liability that may exceed \$150 million. The AGO has identified the resources necessary to a proper defense of the State, including the use of outside expertise when those resources do not exist within State government.

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Performance Measure Detail

Activity Inventory

H004 HCA Public Employee Benefits

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

The HCA cannot cost effectively oversee the state's two top health care purchasers, Washington Apple Health (Medicaid) and the Public Employees Benefits Board (PEBB) programs, as well as other programs, without the legal services provided by the AGO.

Does this decision package provide essential support to one or more of the Governor's Results Washington priorities?

This request supports Governor Inslee's Results Washington Goal 5: Effective, Efficient and Accountable government – Customer Satisfaction, Cost Effective Government, and Transparent & Accountable. Within the HCA's division of Legal and Administrative Services, the Office of Legal Affairs provides valuable services to include all administrative hearings related to Title XIX funds and administrative hearings related to all public employee benefits. The legal services provided by the AGO helps the HCA reduce the risk of costly litigation and ensures cost-effective government.

What are the other important connections or impacts related to this proposal?

This legal matter affects multiple state agencies and institutions. These stakeholders include but are not limited to the HCA, all state institutions of higher education including the University of Washington and Washington State University, as well as other state agencies that employ non-fulltime employees. Defense of this case has broad stakeholder participation and approval.

What alternatives were explored by the agency, and why was this alternative chosen?

Early resolution was attempted but was unsuccessful. The parties have continued to periodically explore settlement but have been unable to reach agreement. These cases must be defended vigorously because of the large potential damages that might be awarded. There may be a window of opportunity to discuss settlement while the measure of damages issue is being considered by the Supreme Court since the plaintiffs may sense the risk of an adverse result. Another opportunity to negotiate a settlement should arise once the Supreme Court does issue a ruling, although that is a riskier strategy since the State may be confronted with the much more expensive methodology proposed by the plaintiffs. Short of settlement, there is no viable alternative to defending these cases.

There are not statutory, regulatory, or other changes or negotiation possibilities that would reduce the costs of this legal defense. There is no alternative source of income.

What are the consequences of adopting this package?

If funded, the state will be able to ostensibly avoid a multi-million dollar adverse judgment and major limitations upon the Governor's and Legislature's policy prerogatives regarding health care benefits for part-time employees.

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What is the relationship, if any, to the state capital budget?

None

What changes would be required to existing statutes, rules, or contracts, in to implement the change?

None

Expenditure and Revenue Calculations and Assumptions

Revenue Calculations and Assumptions:

Revenue is based on the projected AGO legal service hours per hourly rate.

Expenditure Calculations and Assumptions:

This request is based on several years of experience defending Moore I and calculates an increase using that experience to estimate the additional costs of defending Moore II.

Which costs, savings, and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

Distinction between one-time and ongoing costs:

All costs identified in this package are one-time until the case is finally resolved through court action or settlement. Final resolution of this case is expected in the 2015-17 biennium.

Budget impacts in future biennia:

The AGO legal services for this case are expected to conclude in the 2015-17 biennium and no budget impacts are forecasted in future biennia.

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